

Commonwealth of Massachusetts
Office of Consumer Affairs & Business Regulation
Division of Energy Resources

)
Renewable Energy Portfolio Standard)
Notice of Inquiry Regarding Some Proposed)
Revisions of the Regulations Pertaining to the)
Definition of "Low-Emission, Advanced)
Biomass Power Conversion Technologies")
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**Comments of
Constellation NewEnergy, Inc. and
Constellation Energy Commodities Group, Inc.**

I. INTRODUCTION

Constellation NewEnergy, Inc. ("CNE") and Constellation Energy Commodities Group, Inc. ("CCG") (collectively, "Constellation") are pleased to submit the following comments to the Division of Energy Resources ("DOER") in response to the DOER's above-captioned Notice of Inquiry ("NOI") dated July 1, 2005.

CNE is the leading competitive supplier of electricity in the United States and is a licensed electric retail supplier in 17 states, including Massachusetts, and two Canadian provinces. CNE currently provides over 15,000 megawatts ("MW") of electric supply directly to businesses throughout the country.

CCG is a wholesale supplier of electric power to many of New England's electric utilities in connection with either their standard offer or default service obligations. CCG is a regular participant in default service power supply solicitations in Massachusetts and is from time to time a successful bidder.

CNE and CCG are subsidiaries of Constellation Energy Group, Inc., a Fortune 200 company headquartered in Baltimore, Maryland which also owns Baltimore Gas and Electric Company, a regulated utility.

The following limited comments are directed to the Proposed Revisions to the RPS Regulations and to the questions posed by DOER. Constellation expects to be active in the rulemaking that will follow this Notice of Inquiry.

II. COMMENTS

Constellation has been a long-time supporter of renewable energy. Accordingly, Constellation applauds DOER for this effort to clarify the rules regarding the definition of low-emission, advanced biomass power conversion technologies. By adopting clear rules with objective, verifiable standards, DOER will help to create a well-functioning market which will benefit consumers and developers alike.

Specific comments regarding several of the proposed revisions described in the NOI are set forth below.

Proposed Revision 2(c): Low-Emission Criterion

The NOI proposes to set specific emission standards to replace the current process of case-by-case determination and sets forth two potential sets of standards (NOI Table 2 and Table 3).

Setting specific emission standards will increase certainty, help to create a well-functioning market, and be an improvement over the current case-by-case process.

With regard to the alternative sets of emissions standards set out in NOI Tables 2 and 3, Constellation encourages DOER and DEP to adopt the 0.075 lbs per MMBtu NO_x limit in Table 2 rather than the even stricter limit in Table 3. As demonstrated by Connecticut's experience with this standard, the 0.075 lbs per MMBtu limit, while stringent, is reasonable and achievable.

Moreover, DOER and DEP should adopt standards that will result in low-emission, advanced biomass power conversion generating facilities playing a role in the Massachusetts RPS as envisioned by the Legislature. As DOER notes in the NOI, these units can have a positive impact on air quality and the reduction of regional, net, greenhouse gas emissions.

Further, DOER and DEP should seek to adopt standards that will result in the generation of Massachusetts RPS-eligible RECs that are competitive with other products in the marketplace. As DOER is well-aware, the Massachusetts RPS is not the only game in town. Massachusetts now competes with Connecticut and other states for RECs for RPS compliance. There is a serious risk that, if we set standards that are too complicated, price discovery and market liquidity for these RECs will be hampered.

For biomass plants, the Massachusetts RPS is inherently more complicated than the Connecticut RPS because the Massachusetts RPS imposes both a technology standard and an emissions standard, whereas the Connecticut RPS imposes only an emissions standard. Given this built-in disadvantage, it is especially important that we keep our emissions standard in line with Connecticut's. Adopting the more stringent standard in Table 3 would

deter developers from making the incremental improvements necessary to meet the Massachusetts RPS, and would thus limit the supply of RPS-eligible RECs for Massachusetts.

Proposed Revision 2(g): Periodic Modifications of Heat Rate and Emissions Rate Standards

The NOI proposes that the heat rate and emissions rate standards could be modified periodically, as long as any changes were announced at least two years before the new standards were enforced.

As the NOI suggests, it is important to balance the objective of providing certainty to developers with that of encouraging the development of more advanced technologies. At this early stage in the development of the RPS, certainty is more important. DOER can provide that certainty by designating a period, e.g., 5 years, during which the standards will not change. This will provide the assurance that is needed to accelerate the development of RPS-eligible generation.

Proposed Revision 3: Retrofitting with Eligible Biomass Technologies

The NOI proposes to replace the Advanced Biomass Retooling Guidelines with regulatory provisions. This is a welcome change that would increase certainty and streamline regulatory compliance.

The NOI also proposes to place a very stringent limitation on plants that meet those new regulatory provisions: the period in which the output of a retrofitted plant would be regarded as New Renewable Generation, and thus RPS eligible, would be only 36 months. The stated basis for this limitation is to create some limited financial incentive for retooling of existing biomass plants,

without reducing the incentive for the development of new plants using “more favored” renewable resources and technologies.

DOER should reconsider this proposal. There is nothing in the RPS statute that authorizes it. The statute provides no basis for favoring some technologies over others. It lists eligible fuel sources on an equal footing: biomass is listed equally with solar and wind. The RPS statute also creates a simple, binary system: a generating source is either eligible or not based on its generating technology and fuel source. There is no statutory basis for temporary eligibility.

III. CONCLUSION

Constellation respectfully requests that DOER modify the proposed revisions in accordance with the foregoing recommendations.

Respectfully submitted,

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